

STATE OF MICHIGAN
COURT OF APPEALS

CASTLE INVESTMENT COMPANY,

Plaintiff-Appellant,

v

CITY OF DETROIT,

Defendant-Appellee.

UNPUBLISHED

June 17, 2008

No. 278075

Wayne Circuit Court

LC No. 98-836330-CZ

Before: Zahra, P.J., and Cavanagh and Jansen, JJ.

PER CURIAM.

Plaintiff appeals as of right the order of the trial court granting summary disposition to defendant and denying summary disposition to plaintiff in this action challenging the enforcement of defendant city's Ordinance 124-H. We affirm.

For a detailed statement of facts relevant to this appeal from the inception of the case until March 19, 2002, see *Castle Investment Co v Detroit*, unpublished opinion per curiam of the Court of Appeals, issued March 19, 2002 (Docket No. 224411), slip op, pp 1-3. Our Supreme Court remanded the case to this Court for consideration of the issues raised in defendant's cross-appeal. *Castle Investment Co v Detroit*, 471 Mich 904, 905; 688 NW2d 77 (2004). This appeal involves the sole issue whether the trial court properly concluded that defendant followed the rulemaking procedures set forth under § 2-111 of defendant's Home Rule Charter in developing inspection guidelines relating to Ordinance 124-H, pursuant to this Court's order remanding this case to the trial court for consideration of this issue in *Castle Investment Co v Detroit (On Remand)*, unpublished opinion per curiam of the Court of Appeals, issued March 15, 2005 (Docket No. 224411). In its opinion on remand, this Court identified both the sole issue for the trial court to decide, as well as plaintiff's remedy:

Since it does not appear that a factual determination regarding the validity of the guidelines was ever rendered, we remand the matter to the circuit court for such determination. If the [trial] court concludes that the ordinance is invalid because rulemaking procedures were not followed, it should enjoin further enforcement of those guideline provisions unless and until there is compliance with such procedures. [*Castle Investment Co v Detroit (On Remand)*, *supra*, slip op, p 4.]

Plaintiff argues that there is no genuine issue of material fact regarding defendant's failure to follow the rulemaking procedures outlined in Home Rule Charter § 2-111 in developing the inspection guidelines implementing Ordinance 124-H. We disagree.

This Court reviews a trial court's ruling on a motion for summary disposition de novo. *City of Taylor v Detroit Edison Co*, 475 Mich 109, 115; 715 NW2d 28 (2006). Pursuant to a motion brought under MCR 2.116(C)(10), this Court construes the pleadings, admissions, and other evidence submitted by the parties in a light most favorable to the non-moving party. *Brown v Brown*, 478 Mich 545, 551-552; 739 NW2d 313 (2007). Because a "mere promise" to offer factual support for a party's position at trial is insufficient to overcome a motion brought under MCR 2.116(C)(10), this Court considers "the substantively admissible evidence actually proffered in opposition to the motion." *Maiden v Rozwood*, 461 Mich 109, 121; 597 NW2d 817 (1999). Summary disposition is properly granted under MCR 2.116(C)(10) where there is no genuine issue of material fact for trial except for the amount of damages. *Zsigo v Hurley Med Ctr*, 475 Mich 215, 220; 716 NW2d 220 (2006). A trial court's construction of a municipal ordinance is reviewed de novo. *Soupal v Shady View, Inc*, 469 Mich 458, 462; 672 NW2d 171 (2003).

Municipal ordinances are interpreted using the same rules of construction applicable to statutes. *Goldstone v Bloomfield Twp Pub Library*, 479 Mich 554, 569 n 15; 737 NW2d 476 (2007). In interpreting a statute, the fundamental task of a court is to "discern and give effect to the Legislature's intent as expressed in the words of the statute." *Pohutski v City of Allen Park*, 465 Mich 675, 683; 641 NW2d 219 (2002). Where the plain and ordinary meaning of the statutory language is clear, further judicial construction is unwarranted. *Nastal v Henderson & Assocs Investigations, Inc*, 471 Mich 712, 720; 691 NW2d 1 (2005). See, also, *DiBenedetto v West Shore Hosp*, 461 Mich 394, 402; 605 NW2d 300 (2000). Judicial construction of a statute is proper only where reasonable minds could differ about the meaning of the statute. *Adrian School District v Michigan Public School Employees Retirement System*, 458 Mich 326, 332; 582 NW2d 767 (1998). This Court accords to every word or phrase of a statute its plain and ordinary meaning, unless a term has a special, technical meaning, or is defined in the statute. *Sun Valley Foods Co v Ward*, 460 Mich 230, 237; 596 NW2d 119 (1999). "The generally accepted rule is that a presumption prevails in favor of the reasonableness and validity of a municipal ordinance unless the contrary is shown by competent evidence, or appears on the face of the enactment." *Gora v Ferndale*, 456 Mich 704, 720; 576 NW2d 141 (1998).

Section 2-111 of the Detroit Home Rule Charter provides, in pertinent part:

1. Before adopting any rule governing dealings between the city and the public, or establishing hearing procedures for matters in dispute, the city agency shall give notice of a hearing by publication in a daily newspaper of general circulation at least four (4) weeks in advance of the hearing.

The notice shall:

- A. Contain the proposed rule or a statement of its substance;
- B. Specify the officer or employee from whom additional information can be obtained; and

- C. Specify the time, place and method for presentation of views by interested persons.

The agency shall give any interested person the opportunity to submit written recommendations and comments, copies of which shall be kept on file and made available for public inspection.

No rule shall become effective until it has been published in a daily newspaper of general circulation. All effective rules shall be printed in a book of city rules.

The following "Notice of Public Hearing" appeared in the March 17, 1975, issue of the Detroit Legal News:

In accordance with Article 2, Section 2-111 of the City Charter of the City of Detroit, a public hearing will be held at 10 a.m., April 16, 1975, in Room 401 of the City-County Building. The hearing is scheduled pursuant to establishing minimum standards necessary for implementation of a proposed ordinance regulating the sale or transfer of one- and two-family residential buildings. Additional material relative to specific standards may be obtained at the Office of the City Clerk or the Buildings and Safety Engineering Department, 401 City County Building. Interested citizens may express their views either in person or in writing. Inquiries may be directed to Creighton C. Lederer, Director, or Richard E. Lawson, Assistant Code and Zoning Coordinator, Buildings and Safety Engineering Department, 401 City County Building, Detroit, Michigan, 48226.

This notice demonstrates that defendant complied with the rulemaking procedures set forth under Home Rule Charter § 2-111 to the extent that the inspection guidelines are valid and enforceable. The March 17, 1975, notice was published in the Detroit Legal News at least four weeks in advance of the April 16, 1975, hearing. Plaintiff and defendant agreed that the Detroit Legal News qualified as a "daily newspaper of general circulation." Further, the notice contained the substance of the rule when it stated that the subject was "establishing minimum standards necessary for implementation of a proposed ordinance regulating the sale or transfer of one- and two-family residential buildings." Creighton C. Lederer and Richard E. Lawson were the officers identified in the notice from which additional information could be obtained. The notice provided that interested persons could "express their views either in person or in writing." According to the notice, those intending to express their views in person could do so at the April 16, 1975, hearing.

Although the record is unclear regarding whether the inspection guidelines themselves were ever "published in a daily newspaper of general circulation," as required under Home Rule Charter § 2-111, plaintiff has failed to present competent evidence that the inspection guidelines were not so published; therefore, plaintiff has failed to rebut the presumption "in favor of the reasonableness and validity" of the inspection guidelines in this respect. See *Maiden, supra* at 121. Similarly, plaintiff failed to argue, much less present evidence, that defendant failed to allow the public to inspect written recommendations and comments pursuant to Home Rule Charter § 2-111. Moreover, even though defendant admitted that the inspection guidelines were not "printed in a book of city rules," under Michigan law, the failure to record the inspection

guidelines in the “book of city rules” does not render the inspection guidelines unenforceable. *Howell Twp v Roto Corp*, 236 Mich App 438, 439, 442; 600 NW2d 412 (1999) (holding that failure to comply with MCL 41.185(1), which imposed a duty on a township clerk to record an ordinance, did not affect the enforceability of the ordinance that was not timely recorded).

The March 17, 1975, notice published by the Buildings and Safety Engineering Department (“BSED”) in the Detroit Legal News, together with plaintiff’s failure to come forward with contradictory evidence, demonstrates that there is no genuine issue of material fact that defendant complied with the rulemaking procedures outlined in Home Rule Charter § 2-111 in developing the inspection guidelines, which comprised the sole issue on remand. *Castle Investment Co v Detroit (On Remand)*, *supra*, slip op, pp 4-5. We conclude that the trial court correctly applied Home Rule Charter § 2-111 when it ruled that defendant complied with its notice requirements. Accordingly, the trial court properly denied plaintiff’s motion for summary disposition, and granted defendant’s motion for summary disposition.

Plaintiff further argues that Ordinance 124-H is invalid because the inspection guidelines were developed before Ordinance 124-H was enacted. Plaintiff claims that defendant was precluded under the separation of powers doctrine from supporting its position with evidence regarding actions of the city council. Moreover, plaintiff contends that Ordinance 124-H is unenforceable because the notice did not identify the ordinance for which the inspection guidelines to be discussed would apply. Lastly, plaintiff asserts that the prospective language of Ordinance 124-H indicates the intent of the city council that the BSED develop the inspection guidelines after the enactment of Ordinance 124-H. All of plaintiff’s arguments lack merit. Significantly, plaintiff does not argue that the inspection guidelines used to implement Ordinance 124-H were substantively defective or otherwise unreasonable. Instead, each of plaintiff’s arguments is premised on its invitation to elevate form over substance so as to invalidate Ordinance 124-H, which was enacted over 30 years ago. See *Cain v Waste Mgmt Inc*, 259 Mich App 350, 367; 674 NW2d 383 (2003) (refusing to interpret a statute in a manner that would produce unfair results and would exalt form over substance).

With respect to plaintiff’s first argument, that rules that implement an ordinance must be promulgated after the ordinance is enacted, plaintiff invites this Court to speculate that in developing the inspection guidelines prior to the enactment of Ordinance 124-H, the BSED could have exercised “uncontrolled, arbitrary power” in the absence of guidance from the ordinance itself, which would have delineated the scope of the BSED’s authority. However, plaintiff failed to support its conjecture that the BSED exceeded the authority granted to it by Ordinance 124-H. Plaintiff came forward with no evidence to show that the inspection guidelines, which were developed to establish minimum standards for habitability for one- and two-family dwellings, were excessive, arbitrary, or capricious. Accordingly, plaintiff’s first argument that Ordinance 124-H is invalid fails. See *Maiden*, *supra* at 121.

Next, plaintiff argues that defendant was precluded under the separation of powers doctrine from presenting evidence relating to actions taken by the city council to support its position that defendant complied with Home Rule Charter § 2-111. However, the March 17, 1975, notice of hearing indicates that the hearing was held under the auspices of the BSED, and Creighton C. Lederer and Richard E. Lawson, BSED officials, were identified as persons to whom inquiries could be made. Although defendant did support its position with evidence, including minutes of city council meetings, the evidence was merely cumulative and indirectly

supported defendant's position that the public was well aware of both the inspection guidelines and Ordinance 124-H and its predecessors. Because the March 17, 1975, notice is direct, objective, and compelling evidence that defendant complied with the rulemaking procedures set forth under Home Rule Charter § 2-111, plaintiff's argument that other evidence submitted by defendant to support its position violated the separation of powers doctrine lacks merit.

Plaintiff next argues that the March 17, 1975, notice of hearing was insufficient because it did not identify the ordinance to which the inspection guidelines would apply. Specifically, plaintiff contends that the inspection guidelines mentioned in the March 17, 1975, notice of hearing applied not to Ordinance 124-H, which applies to the sale or transfer of one- or two-family dwellings generally, but instead were developed to implement Ordinances 60-H and 104-H, which regulated the sale or transfer of one- or two-family dwellings between governmental agencies and investors. However, Home Rule Charter § 2-111 required the BSED to publish a notice "contain[ing] the proposed rule or a statement of its substance." The March 17, 1975, notice contained a statement of the substance of the rule to be discussed, which was to establish "minimum standards necessary for implementation of a proposed ordinance regulating the sale or transfer of one- and two-family residential buildings." Plaintiff failed to support its implication that the inspection guidelines applicable to Ordinance 124-H, which regulated the sale or transfer of one- and two-family dwellings generally, were different than the inspection guidelines applicable to Ordinances 60-H and 104-H, which regulated the sale or transfer of one- and two-family dwellings for investment purposes.

Because the inspection guidelines were developed to implement Ordinances 60-H, 104-H, and 124-H, and because the March 17, 1975, notice advised the public that the subject matter was to establish "minimum standards necessary for implementation of a proposed ordinance regulating the sale or transfer of one- and two-family residential buildings," plaintiff attempts to pursue a "distinction without a difference" in making this argument. Moreover, because plaintiff failed to support its contention that the inspection guidelines discussed at the April 16, 1975, hearing did not apply to Ordinance 124-H, its argument fails. See *Maiden, supra* at 121.

Lastly, plaintiff argues that the language of Ordinance 124-H prospectively directed the BSED to prepare a list of inspection guidelines, and did not provide for the adoption of the pre-existing inspection guidelines developed for Ordinances 60-H, 104-H, or 124-H's progenitors. However, the language indicating a prospective direction to the BSED to prepare a list of inspection guidelines is severable from the remainder of Ordinance 124-H. In the prior appeal, this Court recognized:

In *Jott, Inc v Charter Twp of Clinton*, 224 Mich App 513, 547-548; 569 NW2d 841 (1997), quoting *Pletz v Secretary of State*, 125 Mich App 335, 375; 336 NW2d 789 (1983), this Court applied a similar principle to a zoning ordinance:

The doctrine of severability holds that statutes should be interpreted to sustain their constitutionality when it is possible to do so. Whenever a reviewing court may sustain an enactment by proper construction, it will uphold the parts which are separable from the repugnant provisions. To be capable of separate enforcement, the valid portion of the statute must be independent of the invalid sections, forming a complete act within itself. After separation of the valid parts of the enactment, the law

enforced must be reasonable in view of the act as originally drafted. One test applied is whether the law-making body would have passed the statute had it been aware that portions therein would be declared to be invalid and, consequently, excised from the act. [*Castle Investment Co v Detroit (On Remand)*, *supra*, slip op, p 4.]

Consistent with this Court's rationale in applying the doctrine of severability in the prior appeal, if the prospective language provided in Ordinance 124-H were deleted, the requirement that the inspection guidelines be used in conjunction with the issuance of a certificate of approval or inspection report would remain intact. Ensuring that one- and two-family dwellings meet minimal standards of habitability prior to sale or transfer was the ultimate goal of Ordinance 124-H, not the timing of the development of the inspection guidelines. Because "the valid portions are independent of the invalid sections and form a complete act within itself," and "enforcement of this revised act would be reasonable in view of the act as originally drafted," the allegedly invalid portion of the Ordinance may be severed, leaving its enforceability intact.

In sum, defendant sufficiently demonstrated that it complied with the rulemaking procedures outlined in § 2-111 of the City Charter in developing the inspection guidelines. Plaintiff's arguments that Ordinance 124-H is otherwise invalid lack merit.

Affirmed.

/s/ Brian K. Zahra
/s/ Mark J. Cavanagh
/s/ Kathleen Jansen